

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

In the Matter of:	)	NOTICE OF DETERMINATION
	)	
Federal Bureau of Prisons	)	
U.S. Department of Justice	)	
Respondent	)	Docket No. RCRA-03-2012-7001
	)	
Federal Correctional Institution Gilmer	)	
201 FCI Lane	)	
Glenville, West Virginia 26351	)	
	)	
Facility	)	

**NOTICE OF DETERMINATION**

Pursuant to the Final Policy Statement, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (April 11, 2000) (Self-Disclosure Policy), the U.S. Environmental Protection Agency, Region III (EPA) hereby issues this Notice of Determination (NOD) regarding violations by Federal Correctional Institution Gilmer (FCI Gilmer), a facility owned and operated by the U.S. Department of Justice, Federal Bureau of Prisons (BOP), of Section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413; Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a); the West Virginia Hazardous Waste Management Act (HWMA), Chapter 22-18A; and Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321. FCI Gilmer is located in Glenville, West Virginia. The violations which are the subject of this NOD were voluntarily disclosed to EPA by FCI Gilmer by report submitted to EPA on August 17, 2009. This report was submitted to EPA pursuant to the Facility Audit Agreement between the BOP and EPA, dated March 24, 2007.

**I. SELF-DISCLOSURE POLICY**

EPA issued the Self-Disclosure Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties for certain self-disclosed violations, however, EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies the following conditions, as set forth in the Self-Disclosure Policy, EPA will not seek gravity-based

penalties for violations of the federal environmental requirements: (1) discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third-party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100 percent, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75 percent, if the disclosing entity satisfies conditions (2) - (9), above. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. In the report provided to EPA on August 17, 2009, FCI Gilmer disclosed the violations listed below.

- Violation 1: FCI Gilmer violated Section B, Item 12, in its Permit to Modify, permit number R13-2456A, by failing to date the certifications for the monthly and rolling yearly emission rates for volatile organic compounds, aggregate and individual hazardous air pollutants, and particulate matter from a spray booth during 2008. This permit to modify was issued in accordance with 45 Code of State Rules (CSR) Series 13, which is entitled, Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation. This provision of the West Virginia CSR is part of the State Implementation Plan and, as such, the permit issued to FCI Gilmer is federally enforceable.
- Violation 2: FCI Gilmer violated W. Va. Code, § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11, by failing to make a waste determination for two waste streams in accordance with 40 C.F.R. § 262.11.
- Violation 3: FCI Gilmer was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 and a “non-transportation” facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto, and 36 Fed. Reg. 24080 (1971), engaged in storing or consuming oil or oil

products, which, due to its location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110. FCI Gilmer did not have an adequate Spill Prevention, Control and Countermeasure (SPCC) Plan as required by 40 C.F.R. § 112.3.

2. Based on the information provided by FCI Gilmer, EPA has determined that FCI Gilmer has met each of the following conditions set forth in the Self-Disclosure Policy, as explained below.

(a) FCI Gilmer has stated that the violations were discovered through an environmental audit.

(b) FCI Gilmer has stated that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) The violations were promptly disclosed to EPA in writing by FCI Gilmer.

(d) FCI Gilmer has stated that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, report by a “whistleblower” employee or imminent discovery by a regulatory agency.

(e) FCI Gilmer has described the steps the facility has taken to correct the violations.

(f) FCI Gilmer has stated that the potential violations are not repeat violations from any prior self-disclosure or enforcement action within the past three years.

(g) FCI Gilmer has stated that the potential violations did not (1) result in serious actual harm, or present an imminent and substantial endangerment to human health or the environment, or (2) violate the specific terms of any judicial or administrative order or consent agreement.

(h) FCI Gilmer has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Self-Disclosure Policy to its disclosure.

### **III. DETERMINATION**

Pursuant to the Self-Disclosure Policy, and based on information provided by FCI Gilmer, EPA makes the following determination concerning each of the violations identified above:

1. FCI Gilmer’s failure to comply with the above listed regulations has resulted in violations of Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671; Section 3008(a) of

RCRA, 42 U.S.C. § 6928(a); the HWMA, Chapter 22-18A; and Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

2. The authority to seek civil penalties for the violations recited herein is found at Section 113(a) and (d) of the CAA, 42 U.S.C. § 7413(a) and (d), and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).
3. Pursuant to the Debt Collection Improvement Act of 1996, (DCIA) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Penalty Inflation Rule), violations of Section 113 of the CAA, 42 U.S.C. § 7413, and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), which occurred subsequent to March 15, 2004, and through January 12, 2009, are subject to a statutory maximum penalty of \$32,500 for each day during which a violation occurs; violations which occurred after January 12, 2009, are subject to a statutory maximum penalty of \$37,500 for each day during which a violation occurs.
4. EPA has calculated the gravity-based penalty for the disclosed violations based upon the *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991, and the *RCRA Civil Penalty Policy*, dated June 2003, and in light of the information available to EPA at this time, the total gravity-based civil penalty for the disclosed violations described herein would be forty one thousand three hundred seventy dollars (\$41,370.00).
5. Based upon the information provided by FCI Gilmer and EPA's consideration of the aforementioned policy, FCI Gilmer has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100 percent reduction in the gravity-based component of the civil penalty for the disclosed violations. No significant economic benefit of non-compliance has accrued to FCI Gilmer concerning the violations described herein. Therefore, EPA will not assess a gravity-based civil penalty against FCI Gilmer concerning the aforementioned violations, nor will the Agency assess a penalty concerning any economic benefit of noncompliance which has accrued to FCI Gilmer.

#### **IV. RESERVATION OF RIGHTS**

1. This NOD resolves only the potential claims for civil penalties pursuant to Section 113(a) and (d) of the CAA, 42 U.S.C. § 7413(a) and (d), and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations alleged herein and as specifically described in the report submitted on behalf of FCI Gilmer on August 17, 2009. Nothing in this NOD is intended, nor shall be construed, to operate in any way to resolve criminal liability, if any, of FCI Gilmer. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of all federal environmental law.
2. This NOD shall not relieve FCI Gilmer of its obligation to comply with all applicable


provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of the CAA, RCRA, and CWA, or any regulations promulgated thereunder.

3. EPA reserves the right to undertake any action against any person, including FCI Gilmer, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
4. EPA reserves the right to revoke this NOD and thereby, render such Notice of Determination null and void if and to the extent that any information or certification provided by FCI Gilmer, upon which any civil penalty mitigation granted herein for such violation was based was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by FCI Gilmer.

In issuing this NOD, EPA seeks to promote self-auditing by FCI Gilmer and expects FCI Gilmer to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the U.S. Environmental Protection Agency, Region III**

Date: 12.19.11

By:   
Samantha P. Beers, Director  
Office of Enforcement, Compliance and  
Environmental Justice